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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 440/2010

Decision adopted by the Committee at its fifty-fourth session (20 April–15 May 2015)

Submitted by:	G.A.B.
Alleged victim:	The complainant
State party:	Switzerland
Date of complaint:	7 September 2010 (initial submission)
Date of present decision:	4 May 2015
Subject matter:	Expulsion to Guinea
Procedural issue:	None
Substantive issue:	Risk of torture
Article of the Covention:	3

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fourth session)

concerning

Communication No. 440/2010*

Submitted by:	G.A.B.
Alleged victim:	The complainant
State party:	Switzerland
Date of complaint:	7 September 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 4 May 2015,

Having concluded its consideration of complaint No. 440/2010, submitted to the Committee against Torture by G.A. B. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1.1 The complainant and author of the communication, dated 7 September 2010, is G.A.B., who was born on 20 October 1972. He contends that his expulsion to Guinea by Switzerland would constitute a breach of article 3 of the Convention. He is not represented by counsel.

1.2 On 17 December 2010, the Committee, through its Rapporteur on new complaints and interim measures, rejected the complainant's request for interim measures.

The facts as submitted by the complainant

2.1 On 13 November 2007, the complainant lodged his first application for asylum in Switzerland, and on 26 February 2008, the Federal Office for Migration rejected his application on the grounds that it lacked credibility. On 10 March 2008, the Federal Administrative Court rejected his appeal. The complainant returned to Guinea on 29 August 2009. Shortly before leaving, on 6 August 2009, he lodged a new application for asylum in Switzerland.

* The following members of the Committee participated in the examination of the present communication: Alessio Bruni, Satyabhoosun Gupt Domah, Felice Gaer, Abdoulaye Gaye, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

2.2 Once back in Guinea, the complainant worked at a coffee bar in Conakry and lived with his aunt. He sympathized with the opposition political party, the Union des Forces Démocratiques de Guinée (Union of Democratic Forces of Guinea) (UFDG). A demonstration was planned for 28 September 2009 at Conakry stadium to protest the power of the military and to request the holding of free and democratic elections. UFDG supporters gathered at the coffee bar where the complainant worked in order to prepare the event. During the demonstration, in which the complainant participated, he was arrested with his cousin by members of the armed forces and was taken to the Alpha Yaya military camp, where he was beaten, having been accused of incitement to civil disobedience. He was held with five other people for 3 days, during which he was tortured, beaten, imprisoned in harsh conditions and denied the right to a lawyer and to receive a visit from his family.[1] The complainant and the other detainees went three days without eating and were subjected to acts of intimidation. On 15 October 2009, plans had been made to take him to Kundara or to the island of Kasa to be executed. Thanks to a member of the armed forces whom he knew and who was able to argue on his behalf, the complainant was released. Since his name was on the list of government opponents, the complainant made plans, with his aunt's assistance, to leave for Belgium.

2.3 After the complainant's escape[2] and his departure from Guinea on 31 October 2009, his aunt was continually harassed by State authorities and was summoned on several occasions and questioned about the complainant's case. She therefore decided to leave the country herself and to go to a neighbouring country.[3] The complainant indicates that he is still wanted by the State of Guinea.

2.4 On 3 November 2009, the complainant arrived in Belgium, where he applied for asylum. On 15 December 2009, in accordance with the Schengen and Dublin agreements, he was sent back to Switzerland. On 10 February 2010, the Federal Office for Migration rejected the second asylum application he had lodged prior to his departure to Guinea and which had been suspended until his return. The complainant did not lodge an appeal. On 23 May 2010, he submitted an application for reconsideration to the Office on the grounds of the persecution he purports to have suffered in Guinea from the end of August to the end of October 2009. He attached the following documents to his application: a handwritten letter from his aunt recounting the facts,[4] the summonses (dated 16 October 2009 and 6 November 2009) from the General Directorate of the National Police addressed to him and those addressed to his aunt (three summonses), and a wanted-person notice issued by an investigating judge in Conakry.

2.5 On 23 June 2010, his request for reconsideration was rejected. The complainant had 30 days to lodge an appeal that would not have suspensive effect. After lodging his appeal, the complainant was informed that the judge of the Federal Administrative Court had considered that it had no prospect of success.[5] The complainant was therefore requested to pay the amount of 1,200 Swiss francs as a security deposit and as advance payment for legal costs. Given that the complainant had no means to pay the costs, on 17 August 2010, the Federal Administrative Court took a decision of non-consideration (inadmissibility decision). Domestic remedies have thus been exhausted.

[1] These allegations of torture and ill-treatment were never brought before the national courts (see paragraph 4.4).

[2] In his communication to the Committee, the complainant refers to escape, but he also mentions that he was released because he had a friend in the military.

[3] The complainant does not provide any further clarification concerning the fate of his aunt.

[4] Copy of the letter attached to the communication (letter with no date).

[5] The Federal Administrative Court considered the appeal to be manifestly ill-founded and decided that the complainant would therefore not be granted free legal assistance.

The complaint

3.1 The complainant contends that, in the light of the threats made and attacks he suffered during the demonstration of 28 September 2009, the charge brought against him of inciting the population to civil disobedience and his Fulani background, he is in danger of being subjected to torture on his return to Guinea. In addition, he is a supporter of UFDG – the party that lost in the elections.

3.2 With regard to the general situation in Guinea, the complainant alleges that, when he submitted his complaint to the Committee, the human rights situation in Guinea remained alarming following the unrest caused by the elections, which the complainant considers to have been rigged. Given that UFDG lost the elections, the members of that party, including the complainant, are political opponents who are in danger. The complainant's situation is made worse by the fact that he is of Fulani origin. His political position and his commitment to the establishment of the rule of law mean that he is still regarded as an enemy today.

State party's observations on the merits

4.1 On 17 June 2011, the State party noted that all the new evidence that had been submitted to the Committee relating to the complainant's alleged participation in the demonstration of 28 September 2009 had been taken into account by the authorities of the State party during the review procedure.

4.2 In order to demonstrate the lack of substance of the complainant's claims invoking article 3, the State party makes specific reference to paragraphs 6 and 8 of the Committee's general comment No. 1 (1997), relating to article 3 of the Convention in the context of article 22. Although the Committee must take into account the existence of a consistent pattern of gross, flagrant or mass violations of human rights, the issue is to determine whether the individual concerned is personally at risk of being subjected to torture in the country to which he or she would be returned and whether this risk is foreseeable, real and personal. The State party recognizes that there were violent clashes between the military and the opposition in September 2009, and also within the military junta itself in December 2009. Nevertheless, the security situation has calmed down since that time.

4.3 The State party adds that the situation in Guinea is not characterized by widespread violence. In early 2010, the military junta and the opposition signed an agreement concerning the normalization of political relations in Guinea. Following this, a new President was elected, and a national transitional council endowed with legislative powers was established. In early November 2010, Alpha Condé was elected as the new President of Guinea. Although all this has not resulted in an ideal situation in Guinea, the situation in the country does not, by itself, constitute sufficient reason to believe that the complainant would risk being tortured if he were returned there. The State party argues that the complainant has not demonstrated that he would face a foreseeable, real and personal risk of torture if returned to Guinea.

4.4 The State party notes that, at his two hearings on 15 January 2010 and 2 February 2010, and in his request for reconsideration, the complainant claimed to have been arrested and detained following the demonstration of 28 September 2009. However, he never asserted that he had been subjected to ill-treatment during his detention. It was only in a letter sent after his initial submission to the Committee that the complainant claimed to have been "tortured, beaten and imprisoned in harsh conditions", without, however, substantiating those allegations.

4.5 The State party also notes that the complainant does not contend that he was politically active outside his country of origin. The evidence in the case file submitted

to the authorities of the State party indicates that, after his alleged return to Guinea, the complainant worked in his cousin's coffee bar, where the meeting of UFDG delegates was held on 20 September 2009. During that meeting, mention was allegedly made of the demonstration to be held at Conakry stadium. The complainant claims that he participated in this demonstration. At the 15 January 2010 hearing, he stated that he had not been politically active in Guinea.

4.6 With regard to the complainant's credibility, the national authorities found that the complainant's allegations were neither sufficiently substantiated nor plausible. Several facts are inconsistent with the complainant's life experience and are illogical and vague. In the first place, the complainant has not submitted any evidence of his alleged returns to Guinea after having submitted his second application for asylum in Switzerland on 6 August 2009. Independently of this fact, the State party finds it illogical that the complainant, who maintained during his initial asylum hearing that he had been persecuted in Guinea, would have returned to his country twice,[6] moved in with his aunt and worked in his cousin's coffee bar, whose customers included military personnel in civilian attire, without encountering the slightest problem. It was all the more illogical in that one of his returns to Guinea supposedly took place shortly after he had lodged his second asylum application.

4.7 With regard to his alleged arrest in Conakry stadium and subsequent detention at the Alpha Yaya military camp, the complainant has not provided details or specific evidence. When he appeared before the national authorities, in three instances, he gave evasive replies to questions asked of him.[7] In addition, he gave a superficial account of the treatment to which he was allegedly subjected at Conakry stadium, relying on generalities.[8] Similarly, the complainant does not provide concrete and precise evidence of his transfer to the military camp and his subsequent detention. The State party therefore considers that the complainant's alleged arrest and detention seem implausible.

4.8 When appearing before the national authorities, the complainant claimed that he had left Guinea with a forged passport because he felt persecuted. However, he was unable to give either the birth-date used in this passport or the name of the issuing State,[9] despite the fact that it would have been in his interest to be able to reply in a believable manner during an identity check. With regard to the five summonses and the wanted-persons notice, the State party notes that, given the dates of those documents, the complainant could have transmitted them to the Federal Office for Migration before that Office issued its decision on 10 February 2010 (second asylum procedure). Moreover, it is difficult to understand how the complainant could have left his country on 31 October 2009 without any difficulty, given that the wanted-persons notice was dated 26 October 2009. In view of these circumstances, it is also surprising that the transmittal of the aforementioned documents by mail had not been possible before then. In addition, the complainant appears to have made no effort to find out whether, following his escape, he was wanted by the authorities, which the State party finds unconvincing.[10] The State party adds that, irrespective of the fact that those documents can be obtained easily in Guinea, they do not contain evidence of his persecution.

[6] The complainant notes only one return to Guinea in the communication submitted to the Committee.

[7] Record of the hearing of 2 February 2010.

[8] Ibid.

[9] Record of the hearing of 15 January 2010

[10] Record of the hearing of 2 February 2010.

4.9 For all these reasons, the State party challenges the substance of the complainant's communication and his allegation that he is in danger of being tortured if he is returned to Guinea.

Complainant's comments on the State party's observations

5.1 On 2 August 2012, the complainant considered that his fears of being subjected to torture and ill-treatment had been adequately demonstrated by the evidence that he had presented throughout the domestic proceedings and to the Committee. In addition to the documents he provided, such as the letter from his aunt, the summonses and the wanted-persons notice, the complainant draws attention to the situation in Guinea in terms of the human rights violations that have occurred since the presidential elections in 2010. He notes that the Fulani are subjected to persecution as an ethnic minority. According to the complainant, incidents targeting UFDG opponents and people of Fulani ethnicity are known and documented.

5.2 The complainant stresses that the documents he provided were not forged and that they attest to the risk of torture he would face if he is returned to Guinea.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee notes that the State party has not contested the admissibility of the communication. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

7.2 The issue before the Committee is whether the removal of the complainant to Guinea would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon his return to Guinea. In assessing this risk, the Committee must take account of all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such an analysis is to determine whether the individual concerned would be personally exposed to a real and foreseeable risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture upon return to that country. Additional grounds must be adduced to show that the individual concerned would be personally at risk. By the same token, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person is not at risk of being subjected to torture in his or her specific circumstances.

7.3 The Committee notes in this regard that the situation in Guinea indeed remains worrying, notably with regard to acts of torture that are carried out, inter alia, in places of deprivation of liberty, particularly police stations and military detention camps,[11] as well as with regard to the persistence of a practice of incommunicado detention and a climate of impunity, the latter due primarily to the failure of the law to conform to the Convention.[12] Nonetheless, the issue is to determine whether the complainant has reason to fear that, if returned to his country, he would personally be subjected to acts that violate the Convention.

7.4 All evidence submitted by the complainant was reviewed by the national authorities, who concluded that the author's allegations lacked credibility, given that there was nothing to show that he had returned to Guinea between his two requests for asylum; the new pieces of evidence, such as the summonses and the wanted-persons notice, were submitted late in the proceedings for no apparent reason and their authenticity was questionable; and the complainant never claimed that he was mistreated during his alleged detention in October 2009. The Committee notes that the allegation of torture was made for the first time before the Committee, and not the national authorities, without it however being substantiated with a detailed description of the events reported. In these circumstances, the Committee considers that the material on file does not permit it to consider that the Swiss authorities, which examined the case, failed to conduct an in-depth investigation into the complainant's allegations during the asylum and reconsideration procedures. There is no evidence in the complaint before the Committee to demonstrate that the complainant faces a foreseeable, real and personal danger of being subjected to torture in his country of origin.

7.5 The Committee recalls paragraph 5 of its general comment No. 1, according to which the burden of presenting an arguable case lies with the author of a communication. In the circumstances of this case, in the Committee's opinion, the complainant has not discharged that burden of proof.

8. In the light of the above considerations and in the absence of further pertinent information on file, the Committee, acting under article 22, paragraph 7, of the Convention, concludes that the expulsion of the complainant to Guinea by the State party would not constitute a violation of article 3 of the Convention.

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[11] See CAT/C/GIN/CO/1, paragraph 9.

[12] Ibid., paras., 8, 11, 12 and 15.